THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.17845 of 1999

Dated : 18.06.2007

Between:

Masina Veerraju S/o Chandrayya and another

… **PETITIONERS**

And:

Government of Andhra Pradesh, rep., by its Secretary, I.F.P., Secretariat Buildings, Hyderabad and others.

….**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.17845 of 1999

ORDER:

Petitioners claim to be owners of an extent of Acs.11.37 cents of land in Sy.Nos.70/A to 70/7 situated at Vetlapalem village, Samalkota Mandal in East Godavari District. They proposed to establish a poultry farm in the said land and accordingly, they stated to have obtained permission from the concerned authorities. While so, the Government proposed to acquire the said land for the purpose of development of industrial area by the Andhra Pradesh Industrial Infrastructure Corporation by issuance of a notification under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act"). Subsequently, notices under Section 5-A of the Act were issued to the petitioners and the petitioners stated to have submitted their objections on 24.04.1999 for the proposed acquisition, stating that they have already obtained

permission from the concerned authorities for establishment of a poultry farm, which is also an industry, and therefore their land should not be acquired. However, without considering their objections, the respondents issued draft declaration under Section 6 of the Act. Aggrieved thereby, this writ petition is filed.

A detailed counter-affidavit is filed on behalf of the respondents. It is stated, inter alia, in the counter-affidavit that pursuant to the notification issued under Section 4(1) of the Act, enquiry under Section 5-A of the Act was conducted and the objections of the petitioners were referred to the requisitioning authority, but the same were not considered. Therefore, draft declaration was issued. As the respondents issued the proceedings as per the statutory instructions, they are not contrary to law.

This Court granted an interim direction on 03.08.2000 in W.P.M.P.No.22240 of 1999, directing the respondents not to dispossess the petitioners from their land. The said direction is only not to dispossess the petitioners, but there is no stay of further proceedings pursuant to the draft declaration. Therefore, the respondents ought to have completed other proceedings and passed an award under Section 11 of the Act, but they have not done so till now. According to Section 11-A of the Act, if the award is not passed within a period of two years from the date of publication of the draft declaration, entire proceedings initiated under the Act get lapsed. As the draft declaration is dated 26.07.1999 and as no award is passed yet, this Court is of the view that entire proceedings initiated under the Act, including the notification, dated 05.02.1999, issued under Section 4(1) of the Act got lapsed.

Further, as evident from the counter-affidavit, objections submitted by the petitioners to the acquisition were referred by the Land Acquisition Authority to the requisitioning authority-the Andhra

Pradesh Industrial Infrastructure Corporation, instead considering the same, and the Corporation, without assigning any reasons, rejected the objections of the petitioners. As and when any objections are filed by the interested persons to the proposed acquisition, it is the duty of the Land Acquisition Officer to hold an enquiry and consider the objections, if any, but he cannot refer the objections to any third party like the Andhra Pradesh Industrial Infrastructure Corporation. On this ground also the proceedings initiated under the Act are not sustainable. This view is fortified by the Supreme Court in ***Hindustan Petroleum Corporation Limited v. Darius Shapur Chennai***[1]. At para 15 of the said judgment, the Supreme Court held that Section 5-A of the Act is in two parts. Upon receipt of objections, the Collector is required to make such further enquiry as he may think necessary whereupon he must submit a report to the appropriate Government in respect of the land which is the subject-matter of notification under Section 4(1) of the Act. The said report would also contain recommendations on the objections filed by the owner of the land. He is required to forward the records of the proceedings held by him together with the report. On receipt of such a report together with the records of the case, the Government has to render a decision thereupon. It is now well settled in view of the catena of decisions that the declaration made under Section 6 of the Act need not contain any reason.

Further, in para 19 of the said judgment, the Supreme Court held that the State is required to apply its mind not only on the objections filed by the owner of the land but also on the report which is submitted by the Collector upon making other and further enquiries there for, and also the recommendations made by him in that behalf. The State Government may further inquire into the matter, if any case is made out, for arriving at its own satisfaction that it is necessary to deprive a citizen of his right to property.

For the foregoing discussion, this Court is of the view that the entire proceedings initiated under the Act got lapsed and they are liable to be set aside.

Accordingly, the writ petition is allowed and the notification dated 05.02.1999 issued under Section 4(1) of the Act, the consequential proceedings initiated under the Act, including the draft declaration dated 26.07.1999 issued under Section 6 of the Act, are hereby set aside. There shall be no order as to costs.

_____

18.06.2007

sh

---

[1] 2005(6) ALD 53 (SC)